

37

1 service?

2 A. This language was initially placed into  
3 the service agreement by the sales and marketing  
4 group to ensure optimum service quality. As you're  
5 aware, depending on where a cell phone is used, the  
6 quality of service or the quality of the signal may  
7 vary, depending on where you're at. By seeking to  
8 discourage customers from moving the equipment from  
9 its original location, the company actually sought  
10 to maintain a consistent, high level of signal  
11 quality to the customers, and this was especially  
12 true at the time the service was initially deployed  
13 because it was a new service offering and the  
14 company was unsure of what type of signal we would  
15 have, and we wanted to ensure that our customers  
16 received the optimum service. So this language, no  
17 matter how well-intentioned, was subsequently  
18 deleted from this agreement to leave no question to  
19 the mobility of the service.

20 Q. Now, the Demo/Loaner Equipment Agreement  
21 also contained language that seems to restrict the  
22 mobility of the wireless local loop service. Can  
23 you identify that language?

24 A. Yes. The second sentence of that  
25 agreement states, "The unit is intended to remain

38

1 stationary. Removing the unit from its Cellular  
2 One installation location is a violation of this  
3 agreement and your Cellular One Wireless  
4 Residential Service Agreement, and it may result in  
5 substantial additional fees to you, failure of the  
6 unit and/or termination of this agreement."

7 Q. Once again, why would the Demo/Loaner  
8 Equipment Agreement contain language that seems to  
9 restrict the mobility of the service?

10 A. This language was put into the equipment  
11 agreement for the same reasons it was included in  
12 the service agreement. Western Wireless sought to  
13 ensure that optimum signal quality to our customers  
14 was there for the deployment of this new service  
15 offering in Regent, and by recommending to our  
16 customers that they keep the equipment in its  
17 original location, the company sought to maintain a  
18 consistent high level of service to customers.  
19 This language also was subsequently removed from  
20 the equipment agreement to leave no question as to  
21 the mobility of the service.

22 Q. Notwithstanding the language contained in  
23 the Cellular One Wireless Residential Service  
24 Agreement and the Wireless Residential Service  
25 Demo/Loaner Equipment Agreement, did Western

39

1 Wireless prevent any wireless local loop customers  
2 from using the service in a mobile manner or take  
3 any action against those who used the equipment in  
4 a mobile manner?

5 A. No. Western Wireless determined after the  
6 first year of service in Regent that it was no  
7 longer necessary to encourage wireless local loop  
8 customers to refrain from utilizing the full mobile  
9 characteristics of the services. In fact, the same  
10 wireless local loop service is now being deployed  
11 on a broad scale basis to approximately 1500  
12 customers in the States of Minnesota, Kansas,  
13 Nevada and Texas, and none of these agreements with  
14 Western Wireless and its customers in any of those  
15 states contain any restriction or limitation on the  
16 mobility of the wireless access unit.

17 Q. Is there any reason for restricting the  
18 mobility of the wireless local loop unit, other  
19 than for maintaining optimum signal quality?

20 A. No. The fact that the initial version of  
21 the Wireless Residential Service Agreement and the  
22 Wireless Residential Service Demo/Loaner Agreement  
23 contained the statement recommending that the unit  
24 remain in its original location did not alter the  
25 technical characteristics of the unit or the nature

40

1 of the service provided by Western Wireless. The  
2 equipment is mobile cellular equipment that  
3 customers can and do use in mobile applications.

4 Q. Have all wireless local loop customers in  
5 Regent signed the addendums to the wireless -- to  
6 the Cellular One Residential Service Agreement  
7 marked in this proceeding as Western Wireless  
8 Exhibit 1 and the addendum to the Wireless  
9 Residential Service Demo/Loaner Equipment Agreement  
10 marked as Western Wireless Exhibit 2?

11 A. Yes. All of the customers that were on  
12 our service at the time when -- when we originally  
13 signed the customers up have signed these  
14 addendums, and all customers that have signed up  
15 for service after February of 2000, they did not  
16 need to sign the addendum as we were using the new  
17 service agreement that did not contain the language  
18 that was talked about before.

19 Q. So as it now stands, is there any language  
20 in the Cellular One Wireless Residential Service  
21 Agreement, Wireless Residential Service Demo/Loaner  
22 Equipment Agreement or any other agreement with the  
23 customer that restricts the mobility of the  
24 service?

25 A. No.

41

1 Q. So what new evidence is at issue here for  
2 the Commission to consider in deciding whether it  
3 shall amend the findings of fact, conclusions of  
4 law and order?

5 A. Actually, with the addendums entered into  
6 by all wireless local loop customers that remove  
7 the language relied upon by Consolidated in an  
8 attempt to change the Commission's decision, there  
9 really is no new evidence to consider which would  
10 change its determinations. Even without the  
11 addendums the underlying services provided by the  
12 wireless access unit were still mobile services.

13 Q. Is it your conclusion then that the  
14 wireless local loop service offered by Western  
15 Wireless is and remains mobile?

16 A. Yes.

17 MR. DEJORDY: I have no further questions.  
18 I would tender RaeAnn for cross-examination.

19 MR. BINEK: Thank you.

20 MR. DEJORDY: I guess, first, I need to  
21 move to admit Western Wireless Exhibit 1, which is  
22 the addendum to the Cellular One Wireless  
23 Residential Service Agreement, and Western Wireless  
24 Exhibit 2, which is an addendum to the Wireless  
25 Residential Service Demo/Loaner Equipment

42

1 Agreement.

2 MR. BINEK: Do you have copies for -- I  
3 don't need one. Mr. Maus?

4 MR. MAUS: We have no objection.

5 MR. BINEK: Okay. Hearing no objection,  
6 how are these exhibits marked?

7 MR. MAUS: WW-1 and WW-2.

8 MR. BINEK: WW-1 -- Exhibits WW-1 and WW-2  
9 are admitted. Mr. Maus.

#### CROSS-EXAMINATION

11 BY MR. MAUS:

12 Q. Mrs. Kelsch, Western Wireless does offer  
13 the WRS service in areas other than Regent, Mott  
14 and New England; is that correct?

15 A. What -- what I said was that we are using  
16 the wireless local loop or wireless access unit in  
17 six other locations in the state. However, they  
18 are not -- it's not deployed as a WRS product and  
19 it does not have the same rate plan as what we are  
20 offering in Regent. It has a conventional cellular  
21 mobile plan that is connected with that service or  
22 that unit.

23 Q. So I understand, the rate plan is  
24 different, but the equipment that the individual  
25 has is the same as what's used in Regent?

43

1 A. That is correct.

2 Q. Can you tell us where those six other  
3 areas are?

4 A. Yes, I can. We have one that is used at  
5 NDSU, and that one is being -- that one was  
6 deployed during the flood this summer and is used  
7 at the university itself. We have two that are  
8 used out at Strata in Grand Forks and three that  
9 are used with Minnkota Power Plant in the Grand  
10 Forks area.

11 Q. Don't you also have one at a ranch located  
12 north of Beach, North Dakota?

13 A. That one I'm not aware of.

14 Q. Does the name James Tescher -- Jim Tescher  
15 mean anything to you?

16 A. I've heard the last name before; however,  
17 I'm not familiar with the customer.

18 Q. Is it fair to say that you maybe are not  
19 familiar with all of the WRS units being used  
20 throughout the state?

21 A. I may not know exactly where all of the  
22 tellular units are in the state. However, I have  
23 been told by the sales team that these are where  
24 our tellular units are deployed.

25 Q. Are you aware of the fact that the federal

44

1 law defines a mobile station as one that ordinarily  
2 does move?

3 A. Yes, I am aware of that.

4 Q. And would you agree with me that when this  
5 project went in place in Regent, that you had  
6 contracts in place that said the customer could not  
7 move the equipment?

8 A. At the time when we deployed our service  
9 in Regent, North Dakota, the service agreement did  
10 discourage the customer from using their unit  
11 mobility. However, we do not know how our customers  
12 were using their units -- their access units in  
13 their homes and do not know whether or not they  
14 were moving them from room to room or from inside  
15 to outside of their house or from a house to a  
16 garage or taking it in their car and driving down  
17 the road to their relatives' house.

18 Q. To get back to the question, you used the  
19 words "discouraged" and your counsel used the words  
20 "seems to restrict." Isn't it a fact that Exhibits  
21 7 and 8 state unequivocally that the device cannot  
22 be moved?

23 A. Yes. However, that does not stop the  
24 technical aspects of the unit itself, which is a  
25 mobile unit.

45

1 Q. But it does say that it is not intended to  
2 be moved; wouldn't that be true?

3 A. That would be true.

4 Q. You made a point of saying that the  
5 provisions were put in at the request of sales and  
6 marketing. Does it make any difference who  
7 requested the provision in the contract as to  
8 whether it's more enforceable or less enforceable?

9 A. No, sir. It does not make a difference as  
10 to whether or not it's more enforceable. However,  
11 what -- when sales and marketing looks at putting  
12 in language into service agreements and perhaps our  
13 business attorneys or consumer -- business  
14 attorneys, what it does do is it -- they take into  
15 account different aspects of what is important to  
16 them, and as they looked at this, they looked at  
17 the service quality and the signal quality as being  
18 an issue that was important to the sales and  
19 marketing and felt that that was an aspect that  
20 they needed to hone in on. However, you know, we  
21 in the regulatory department may have looked at  
22 this differently.

23 Q. The changes you have made, which are  
24 introduced as Exhibits 1 and 2, were they made  
25 immediately after Consolidated filed a motion with

1 statement. However, if I was to read it as a sales  
2 and marketing individual, I would say that you may  
3 not be able to receive a phone call.

4 MR. MAUS: I don't have any other  
5 questions.

6 MR. BINEK: Okay. Thank you. Staff have  
7 any questions?

8 MS. JEFFCOAT-SACCO: (Shakes head.)

9 MR. BINEK: Commissioner Hagen.

10 COMMISSIONER HAGEN: Thank you, Bill.

# EXAMINATION

## BY COMMISSIONER HAGEN:

13 Q. RaeAnn, I'm trying to get clear in my own  
14 mind here on Western Wireless Exhibit 2. If I'm  
15 correct, the exhibit is saying that the addendum  
16 replaces the introductory paragraph, in other  
17 words, wipes out the -- wipes out the words that  
18 say that you can't move it anytime; am I right?

19 A. That is correct.

20 Q. What about the other one, if I'm clear on  
21 Western Wireless No. 1? I'm looking at it and  
22 I'm -- maybe I can't get it through my head today,  
23 but exactly where is Section 2 on Cellular One  
24 Wireless Residential Agreement?

25 A. Mr. Commissioner, it's on the backside of

46

1 the District Court to have that case remanded to  
2 the PSC to introduce additional evidence?

3 A. I am not -- I don't know the exact date  
4 that the hearing was requested. However, I do know  
5 that we had all of these -- all of the addendums  
6 were signed by the middle of February.

7 Q. Are you familiar with the FCC ruling  
8 that's been introduced as Consolidated Exhibit No.  
9 10?

10 A. Just what I heard today.

11 Q. I don't have -- in Exhibits 7 and 8 the  
12 phrase is used "failure of the unit." Do you see  
13 that or are you familiar with that?

14 A. I don't have a copy of it.

15 Q. I'm going to read it and then I'll ask you  
16 a question. "... One installation location is a  
17 violation of this agreement and your Cellular One  
18 Wireless Residential Service Agreement and may  
19 result in substantial additional fees to you,  
20 failure of the unit and/or termination of the  
21 agreement."

22 Can you tell us what is meant by "failure  
23 of the unit"?

24 A. Well, Mr. Maus, being I did not write the  
25 language, I'm not exactly sure what is meant by the

48

1 the service agreement, and it's in Section 2, and  
2 it's the --

3 Q. You're right.

4 A. -- second to the last sentence.

5 Q. Thank you. Then I have it. I've got it.  
6 And by these changes, you're saying in effect that  
7 it still is mobile --

8 A. Yes.

9 Q. -- regardless.

10 COMMISSIONER HAGEN: Okay. Thank you.

11 MR. BINEK: Commissioner Wefald.

# EXAMINATION

## BY COMMISSIONER WEFALD:

14 Q. You said that these provisions were put  
15 into these two agreements for the purpose of sales  
16 quality and service quality; is that correct?

17 A. That's correct.

18 Q. How does it affect service quality to move  
19 the unit?

20 A. Commissioner Wefald, what we were looking  
21 for when -- basically when this language was placed  
22 in there was they were looking for optimum service  
23 quality -- or optimum signal quality, excuse me,  
24 and so I may have misspoken when I said the  
25 service, but when I refer to service, a lot of

49

1 times I'm referring to the signal, but it was to  
2 refer to the optimum signal quality to ensure that  
3 you were always able to receive a phone call.  
4 That's one of the things in sales and marketing  
5 that we pride ourselves in, is to not oversell and  
6 not undersell but to make sure that, you know, if  
7 you have this service, that we want you to be able  
8 to receive that phone call.

9 Q. So, for example, in North Dakota there are  
10 some places where a signal is unclear or may not be  
11 able to be received if the person is taking this on  
12 the road and using it from their car. Is that the  
13 situation that you were talking about, just as it  
14 may be unclear for a regular cellular phone when  
15 you're traveling along in your car and you may get  
16 an unclear signal?

17 A. That could be. You know, one of the  
18 things that happened when we introduced the service  
19 in Regent is it was a test market, and we weren't  
20 exactly -- you know, we weren't sure of, you know,  
21 the quality, you know, what -- were we going to be  
22 maintain the high quality that Cellular One is  
23 known for across the state, and so we felt that  
24 initially it probably wasn't too bad of an idea to  
25 have the quality control there by keeping the unit

50

1 within a good, strong signal to make sure that our  
2 customers were able to receive their phone calls.  
3 Yes. That does happen sometimes as you travel  
4 across the state that you may not have a strong  
5 signal. However, there's a difference between this  
6 mobile unit and your conventional handheld or even  
7 a bag phone or your car phone.

8 Q. I know there's a difference. Did you --  
9 would this particular -- this particular unit, if  
10 I'm in my car and want to use it for a fax, I'm  
11 able to do that based on its battery power; isn't  
12 that correct?

13 A. That's correct.

14 Q. All right. And so if I were on a place on  
15 the highway that didn't have a good signal, I would  
16 not be able to send a fax; is that correct?

17 A. You may or may not, depending on the  
18 signal strength at that point. However, it's an  
19 interesting point that you bring up by taking the  
20 unit and putting it into your car. We do have a  
21 customer in one of our other markets that is  
22 traveling all across the United States with his  
23 tellular unit and using it everywhere he goes, and  
24 so, you know, that's showing that it is a very  
25 mobile unit.

51

1 Q. So what you're telling me is that you want  
2 the person who's using the unit to have the optimum  
3 service quality, and that's why you put these  
4 restrictions?

5 A. That was -- that was the indication that  
6 we have gotten from sales and marketing, is they  
7 felt that that was a proper sentence to have in  
8 there. However, we have since, you know, taken  
9 that sentence out knowing that, you know, we need  
10 to have the full mobility of the unit, and at no  
11 time with that sentence in the service agreement  
12 did it restrict the technical aspects of the phone,  
13 of the unit itself, which is a mobile unit.

14 Q. However, you're making a distinction  
15 between the technical aspects and the penalty that  
16 a person might receive if they did move the unit;  
17 isn't that correct?

18 A. Well, Commissioner Wefald, we don't know  
19 how our customers were using our phones. You know,  
20 that's something that -- you know, our wireless  
21 access units. We don't know. We do know, however,  
22 that there were some customers that were taking  
23 them and moving them from room to room within their  
24 house, you know, moving them from inside the house  
25 to a garage or to a barn, and, you know, at no time

52

1 did we impose any type of penalties on those  
2 customers, and for that matter, you know, we would  
3 not have, and that portion of the service agreement  
4 was removed within a month of our beginning service  
5 there.

6 COMMISSIONER WEFALD: Thank you.

7 MR. BINEK: Commissioner Reinbold.

8 COMMISSIONER REINBOLD: Thank you.

9 **EXAMINATION**

10 **BY COMMISSIONER REINBOLD:**

11 Q. Ms. Kelsch, would you say that the  
12 original decision and installation of this service  
13 to Regent was by your company a test case?

14 A. Commissioner Reinbold, when we initially  
15 launched the service down in Regent, it was with a  
16 lot of fanfare and it was something that we had  
17 talked about doing to show what wireless  
18 residential services was all about, and if you'll  
19 recall, when we were here discussing the  
20 possibilities of us receiving our ETC status, one  
21 of the Commissioners, Commissioner Wefald, had  
22 suggested at that point that maybe it would be a  
23 good idea for us to take a look at deploying a test  
24 market to see exactly how the service worked, and  
25 we decided that that was probably something that

53

1 was in our best interests and went ahead and  
2 deployed a test market down in Regent, North  
3 Dakota.

4 Q. Okay. Then understanding the demography  
5 and geography of the Regent area, southwest North  
6 Dakota, and knowing what you now know that which  
7 has transpired in this case, would you choose  
8 Regent again?

9 A. Absolutely, Mr. Commissioner. It was a  
10 very good -- it was a very good area for us to go  
11 into, and we stand by our Regent customers and  
12 believe that it was a great area for us to begin  
13 service.

14 Q. Were you involved in choosing Regent the  
15 first time or was Regent imposed upon you?

16 A. No. It was not imposed upon me.  
17 Actually, I knew of a couple of locations.  
18 However, I was not part of the big decision.

19 Q. Okay. Who was?

20 A. That was decided by those that are above  
21 me, our CEO, John Stanton, and other members of our  
22 company.

23 COMMISSIONER REINBOLD: Okay. That's all  
24 the questions.

25 COMMISSIONER WEFALD: I have a question.

54

1 MR. BINEK: Commissioner Wefald.

2 COMMISSIONER WEFALD: I don't know whether  
3 to ask this question of you or to ask for it in a  
4 brief if we're going to have follow-up briefs.

5 MR. BINEK: I am going to ask for briefs  
6 to be filed in this case.

7 COMMISSIONER WEFALD: You know, what is  
8 difficult -- one of the difficult questions in this  
9 is that the language was in the contracts at the  
10 time that the Commission was making this  
11 determination. Now the language has been removed.  
12 Do I make the decision based on today that the  
13 language is now removed from the contract since  
14 we're now reconsidering this at this time, or do I  
15 base my decision on the language that was in the  
16 agreement and for the customers at the time of the  
17 original hearing, and I don't know how I'm supposed  
18 to address that.

19 MR. BINEK: Well, the two sides have heard  
20 what your concern is, and I will be asking them to  
21 file briefs, and so they can address that question  
22 in their brief.

23 COMMISSIONER WEFALD: Thank you.

24 MR. BINEK: Mr. DeJordy, do you have  
25 further questions?

55

1 MR. DEJORDY: Just a couple.

2 REDIRECT EXAMINATION

3 BY MR. DEJORDY:

4 Q. RaeAnn, in response to Commissioner Hagen  
5 you identified what language was deleted from the  
6 Cellular One Wireless Residential Service  
7 Agreement. Could you turn to the service agreement  
8 and state specifically what language was actually  
9 deleted in the amendment that was entered into by  
10 the customers? Do you have a copy of --

11 A. I don't have a copy of it.

12 Q. Let me provide you with a copy of  
13 Consolidated Exhibit No. 7, I believe.

14 A. "The unit is intended to remain  
15 stationary. Removing the unit from the location  
16 where it was installed by us is a violation of this  
17 agreement and may result in substantial additional  
18 fees to you, failure of the unit, and/or  
19 termination of this agreement."

20 Q. So just to confirm, all that language was  
21 deleted from the agreement; is that correct?

22 A. That is correct.

23 Q. RaeAnn, I now ask you to take a look at  
24 Consolidated Exhibit No. 8. With the amendments  
25 entered into between Western Wireless and the

56

1 customers in Regent, that amendment being Western  
2 Wireless Exhibit 2, could you state specifically  
3 what language in the equipment loaner -- the  
4 Demo/Loaner Equipment Agreement was deleted?

5 A. "The unit is intended to remain  
6 stationary. Removing the unit from its Cellular  
7 One installation location is a violation of this  
8 agreement and your Cellular One Wireless  
9 Residential Service Agreement and may result in  
10 a -- in substantial additional fees to you, failure  
11 of the unit and/or termination of this agreement."

12 Q. Okay. When did you first become aware of  
13 the language that was contained in the service  
14 agreement and the equipment agreement, that  
15 language being language that restricted the  
16 mobility of the service?

17 A. When it was introduced as evidence by  
18 Consolidated.

19 Q. And was that after the hearing that took  
20 place before this Commission?

21 A. Yes.

22 MR. DEJORDY: I have no further questions.

23 MR. BINEK: Mr. Maus, do you have any  
24 questions based on the exchange between the  
25 Commissioners and the witness?

57

1 MR. MAUS: Yes.

2 **REXCROSS-EXAMINATION**

3 **BY MR. MAUS:**

4 Q. If the purpose of that language was  
5 service quality, why would you terminate somebody's  
6 service or add additional fees if they simply moved  
7 the device?

8 A. Mr. Maus, I'm uncertain why that language  
9 was put in there in the first place. I was not  
10 part of the language -- the drafting of the  
11 language to put into the service agreement.

12 Q. Would it be fair to summarize your  
13 testimony to say that the device itself remained  
14 mobile but it might not work if it's moved?

15 A. No. That is not correct.

16 Q. Isn't that what you testified to, that if  
17 it's moved, it may not work?

18 A. No. What I said was it may not have the  
19 optimum signal quality.

20 Q. I'm going to give you a chance to -- I'm  
21 not trying to trick you -- but correct your  
22 testimony. I believe you testified that the  
23 addendums were made one month after service was  
24 introduced?

25 A. Excuse me. After I said that, I thought

58

1 about it. It was February the following year, so  
2 it would have been 13 months.

3 MR. MAUS: Thank you. No other questions.

4 MR. BINEK: Thank you. At this point this  
5 witness is excused.

6 COMMISSIONER WEFALD: I have one other  
7 question.

8 MR. BINEK: Okay. Go ahead.

9 **FURTHER EXAMINATION**

10 **BY COMMISSIONER WEFALD:**

11 Q. Do you have any idea of why the sentence  
12 was in there about may result in additional --  
13 substantial additional fees to you? Why -- what --  
14 why would that result in additional fees to a  
15 customer? Would they be using their unit in a  
16 different way if they took it with them that they  
17 might have additional fees for the service?

18 A. Commissioner Wefald, the only thing that I  
19 can think of is that they may have been referring  
20 to roaming charges, those charges that you would --  
21 you know, say, for example, you travel outside of  
22 the 19 states that we cover and you may receive a  
23 roaming charge. That's the one that comes to mind  
24 to me. I could not think of another type of a  
25 charge that may result.

59

1 Q. It doesn't -- it doesn't say a fine, does  
2 it? It says additional fees.

3 A. Correct.

4 Q. So the additional -- in your understanding  
5 the "may result in substantial additional fees to  
6 you" is different from a fine?

7 A. That is correct. I -- the way I see it is  
8 as I just stated, that it could possibly have been  
9 that maybe you would take it down to South Dakota.  
10 Being in Regent, that's an area that you could very  
11 easily go into and you may obtain roaming fees at  
12 that point.

13 Q. Why would they have talked about  
14 termination of the agreement -- "may result in  
15 termination of this agreement" if you moved it? If  
16 given your theory of what these -- this sentence  
17 means, may result in substantial additional fees,  
18 to roaming charges; failure of the unit would be  
19 the fact that it may not receive a signal properly;  
20 but what about the last one, termination of this  
21 agreement?

22 A. I can't answer that. I don't know what  
23 that means.

24 Q. Other than the plain words?

25 A. Other than the plain words.

60

1 Q. Were you -- they wouldn't have been afraid  
2 of someone stealing the unit because it -- are  
3 they -- I suppose I'm just guessing. Would there  
4 be a threat that they would be -- that -- people  
5 are leasing this equipment?

6 A. Currently the way we have it set up in  
7 Regent, North Dakota, is that we give the unit to  
8 the customer to use, and they don't pay any fees to  
9 us to use the unit itself. So it's -- if they  
10 would terminate their service, the equipment  
11 remains ours and it comes back to us.

12 Q. And so if they gave this piece of  
13 equipment to a friend, that would be against the  
14 rules of this agreement?

15 A. I don't know. I can't answer that  
16 question.

17 COMMISSIONER WEFALD: Thank you.

18 MR. BINEK: Any of the other Commissioners  
19 have any questions?

20 COMMISSIONER HAGEN: No questions.

21 MR. BINEK: Mr. DeJordy, do you have any  
22 questions that -- I'll give you an opportunity to  
23 ask any questions that arose as a result of the  
24 exchange between Commissioner Wefald and the  
25 witness.

61

## REDIRECT EXAMINATION

BY MR. DEJORDY:

Q. RaeAnn, just to clarify additional fees, cellular customers today when they roam outside their designated service area, do they face additional fees with respect to roaming?

A. It depends. On our conventional cellular rate plans we do have some rate plans that include the ability to roam and not pay additional charges or to pay, you know, maybe a 49 cent or 79 cent charge, depending on what state they're in. If you do not have that included in your rate plan, then it would be just the standard roaming charges, which range anywhere from 79 cents to \$1.25.

Q. And are you aware if the wireless residential service customers in Regent -- if they roamed outside of their local calling area if they would face roaming charges?

A. I believe that the way that the service is set up, the rate plan is set up, that it does not include the roaming plan as we have it. However, I don't know if they would incur the roaming charges or not.

MR. DEJORDY: Okay. No further questions.

MR. BINEK: Mr. Maus, I'll give you the

62

same opportunity.

MR. MAUS: No questions.

MR. BINEK: Okay. The witness is excused. Mr. DeJordy, do you have any further witnesses to present?

MR. DEJORDY: No, I don't.

MR. BINEK: Mr. Maus, do you have any rebuttal witnesses?

MR. MAUS: We do not.

MR. BINEK: Okay. At this time I had indicated that I would allow both parties to present closing statements. I would request that it be a brief closing statement, if you wish to make one, and I'll begin with Mr. Maus.

MR. MAUS: And you're also going to ask us to file written briefs?

MR. BINEK: Yes.

MR. MAUS: Okay. I'll try to be -- well, I will be brief. We think it's important for the Commission to go back and visit the original federal law that's involved here because that federal law says that a mobile station is one capable of being moved and which ordinarily does move. That's very important. That's in the statute. That's not in any rules or regulations.

63

That relates to the issues before this Court.

Now the question from Commissioner Wefald, we think, is a very important question, and that is what time frame do you consider the exhibits that have been offered into evidence, and we think it's been remanded to this Commission to make findings of fact based upon August 31st, 1999, and what was in place at that time, and we'll obviously brief that issue for the Commission, but the fact that they changed it after the fact doesn't change the fact that with these two exhibits, 7 and 8, and you go back to the original federal law, that ordinarily does move, they're inconsistent, and their agreement was inconsistent with the federal law.

With regard to Exhibit 10, and I'm going to leave copies for the staff, it's a very thorough examination by the FCC of these quasi fixed systems, and they have reached a conclusion that the proposed regulation which would have said that they're presumed to be mobile is not appropriate. So the FCC did not adopt that regulation. That proposed regulation was before the FCC when you first considered this matter. They've said, we're not going to adopt that, and they gave very good

64

reasons why the fixed or quasi fixed service should not be presumed to be mobile.

COMMISSIONER WEFALD: Do I have a chance to ask a question about that later?

MR. BINEK: Well, they'll be briefing that issue.

COMMISSIONER WEFALD: I understand that, but it's a different conclusion on the last page of their order that I just read than what he stated, and so I just would like to have a chance to have him be able to clarify his conclusion versus the conclusion of the FCC. I'm looking at page eight.

MR. MAUS: Okay. Let me get there.

MR. BINEK: The arguments are not evidence. I mean, he can present it here or in brief. They're not -- they're not evidence in the case. They're Mr. Maus's interpretation of the --

COMMISSIONER WEFALD: I'll just draw it to his attention then that I have a question versus -- his summary of the case versus the conclusion that's reflected on page eight of the conclusion of the FCC order. It doesn't match in my mind. So if you want to address that in your brief or now, that would be fine.

MR. MAUS: I would like to address it

65

1 briefly right now. I think the first sentence says  
2 that. "We find that due to the evolving nature of  
3 fixed wireless service, a case-by-case  
4 determination would best serve the public  
5 interest." So they're deciding then that there  
6 will not be this presumption that was proposed  
7 under the law.

8 I think if you go back to page four,  
9 review the discussion of the first report and  
10 order, and so forth, it goes through that under  
11 number seven and number eight, but I think that is  
12 consistent, Commissioner Wefald. They're saying  
13 we're not going to adopt the presumption. We're  
14 going to do it on a case-by-case basis, and they  
15 rejected the proposed rule which would have  
16 presumed fixed wireless is mobile and said we won't  
17 presume that. It's going to be a case-by-case  
18 basis.

19 COMMISSIONER WEFALD: Thank you.

20 MR. MAUS: I have no further argument.

21 MR. BINEK: Thank you. Mr. DeJordy.

22 MR. DEJORDY: Thank you, Commissioners.

23 The issue before the Commission is a narrow and  
24 straightforward one, that is whether the so-called  
25 new evidence would change the Commission's findings

66

1 of fact and conclusions of law and order dated  
2 August 31st, 1999.

3 The Commission's August 31st, 1999,  
4 decision was that the wireless local loop service  
5 offered by Western Wireless in Regent is a mobile  
6 service. The Commission made that conclusion after  
7 taking a look at the facts, did a case-by-case  
8 review of the issue before them and looked at the  
9 service and came to the conclusion that it is a  
10 mobile service.

11 The Commission did not reconsider this  
12 decision when asked to do so by Consolidated.  
13 Consequently, Consolidated appealed the  
14 Commission's decision to State Court.

15 While this appeal was pending in Court,  
16 Consolidated sought to introduce new evidence in  
17 the form of the Cellular One Wireless Residential  
18 Service Agreement and the Wireless Residential  
19 Service Demo/Loaner Equipment Agreement used by  
20 Western Wireless in Regent.

21 Realizing that these agreements did  
22 contain this language and that the language was not  
23 intended to change the mobile nature of the  
24 underlying services, Western Wireless entered into  
25 addendums with its Regent customers that removed

67

1 this language that could be interpreted as  
2 restricting the mobility of the service.

3 The evidence presented today showed that  
4 the language contained in the Regent agreements  
5 does not change the underlying nature of the  
6 service. The language was included in the initial  
7 versions of these agreements for the sole purpose  
8 of ensuring optimum signal quality.

9 This was a new service, as explained by  
10 RaeAnn, and the operation folks within the company  
11 felt that it was important to maintain a high level  
12 signal quality, especially given the use of this  
13 service as a potential replacement for land line  
14 and a service that was used a little bit  
15 differently than the conventional cellular mobile  
16 service offerings made by the company. So the  
17 operations folks wanted to ensure an optimum  
18 signal. It was a test market and there was a lot  
19 of reasons to -- to impose that condition in the  
20 service agreement.

21 Nevertheless, when the regulatory  
22 department, anyways, realized that this provision  
23 was in the agreement and that it had the unintended  
24 consequence of potentially restricting the mobility  
25 of the service, that language was deleted from the

68

1 agreement. We've heard testimony that customers  
2 are using the service in a mobile manner.

3 I think what this case really boils down  
4 to is that this Commission has made a determination  
5 based upon the facts that this wireless local loop  
6 service is mobile. This so-called new evidence  
7 essentially cancels itself out. The evidence  
8 submitted by Consolidated pointed to some  
9 restrictions in the agreements entered into by the  
10 customers. When the company learned that these  
11 restrictions were in the agreement, it entered into  
12 the addendums to remove those restrictions from the  
13 agreement.

14 At this time the company's offering the  
15 service to approximately 37 customers in Regent.  
16 It is also offering this service to well over 1500  
17 customers throughout North Dakota, Minnesota,  
18 Kansas, Texas and Nevada.

19 Every state that has considered this issue  
20 in the context of pending ETC applications,  
21 including this Commission, has concluded that the  
22 service offered by the company through its wireless  
23 local loop product is a mobile service, and I think  
24 the Commission can find probably greater comfort in  
25 that fact. In its initial determination this



69

1 Commission was the first state in the country to  
2 take on this issue, and it came out with the right  
3 decision, and that decision was that it was a  
4 mobile service. Subsequent to that, the other  
5 states that have considered this issue, Minnesota,  
6 Kansas, Texas, Nevada, have concluded that the  
7 service is a mobile service and is not subject to  
8 state Commission entry and rate regulation.

9 I think the evidence presented in this  
10 case shows that the Commission's findings of fact  
11 and conclusions of law and order should not be  
12 disturbed, and the Commission should issue a  
13 decision finding that that decision has not and  
14 will not change as a result of the new evidence  
15 submitted in this case. Thank you.

16 MR. BINEK: All right. Thank you. At  
17 this point we need to discuss briefing. I  
18 indicated that I will require a brief and also  
19 require that proposed findings be submitted by both  
20 parties, and I guess, first of all, Stephanie, how  
21 much time do you think you'll need to prepare the  
22 transcript with the assumption that the parties  
23 will want transcripts prior to briefing?

24 THE REPORTER: A week-and-a-half to two  
25 weeks.

70

1 MR. BINEK: Two weeks?

2 THE REPORTER: Week-and-a-half to two  
3 weeks.

4 MR. BINEK: How long do you think -- Mr.  
5 Maus, how long do you think it would take you at --  
6 I'm looking for simultaneous briefs by the parties.

7 MR. MAUS: Two weeks after receiving the  
8 transcript.

9 MR. BINEK: Okay. So today is the 26th.  
10 That would -- a month from now would be October  
11 24th. Would that give everybody sufficient time?

12 MR. MAUS: Yes, it does.

13 MR. DEJORDY: That's fine.

14 MR. BINEK: Okay. Then I will require  
15 that briefs be simultaneously filed by both parties  
16 and that there be proposed findings of fact filed  
17 by both parties no later than Tuesday, October  
18 24th.

19 MR. DEJORDY: If I can just confirm that  
20 there is no reply briefs. It would be just the one  
21 simultaneous brief?

22 MR. BINEK: Correct. That is all that I'm  
23 looking for. Okay. I'll ask if the Commissioners  
24 have any final comments or closing comments.  
25 Commissioner Hagen.

71

1 COMMISSIONER HAGEN: Thank you all for  
2 a -- I think we've got a good record, and I'm  
3 looking forward to looking at your briefs. Bill  
4 said we'd be done by Noon, and it looks like we're  
5 going to be. Thank you.

6 MR. BINEK: I already tried to speed up  
7 this process, but you guys insisted on asking  
8 questions. Commissioner Wefald.

9 COMMISSIONER WEFALD: I'm going to also  
10 look forward to reading the briefs. This -- both  
11 sides raise a number of very interesting issues,  
12 and I'll say that I still have questions in my  
13 mind. So your briefs will be very important in  
14 helping me determine the action that I take on this  
15 particular case. I need some time to think about  
16 it, and it's -- I -- so thank you very much for  
17 excellent presentations this morning, and I'll look  
18 forward to the briefs that you have to present.  
19 Thank you.

20 MR. BINEK: Commissioner Reinbold.

21 COMMISSIONER REINBOLD: I'll read the  
22 briefs. Thank you.

23 MR. BINEK: Thank you, Commissioners and  
24 everyone who participated in this proceeding. This  
25 hearing is closed.

72

1 (Concluded at 11:24 a.m., the same day.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## 1 CERTIFICATE OF COURT REPORTER

2  
3 I, Stephanie A. Smith, a Registered  
4 Professional Reporter,

5 DO HEREBY CERTIFY that I recorded in  
6 shorthand the foregoing proceedings had and made of  
7 record at the time and place hereinbefore  
8 indicated.

9 I DO HEREBY FURTHER CERTIFY that the  
10 foregoing typewritten pages contain an accurate  
11 transcript of my shorthand notes then and there  
12 taken.

13 Dated at Bismarck, North Dakota, this 3rd  
14 day of October, 2000.

15  
16  
17 \_\_\_\_\_  
18 Stephanie A. Smith  
19 Registered Professional Reporter  
20  
21  
22  
23  
24  
25

# Kelsch Kelsch Ruff & Kranda

C.F. Kelsch  
1890-1987

Attorneys at Law  
Mandan, North Dakota

\*CLA Member

WILLIAM C. KELSCH  
THOMAS F. KELSCH, P.C.  
ARLEN M. RUFF, P.C.  
THOMAS D. KELSCH, P.C.  
TODD D. KRANDA, P.C.\*  
TIMOTHY J. WAHLIN, P.C.  
ROB FORWARD, P.C.  
WILLIAM J. DELMORE

103 Collins Avenue  
P.O. Box 1266  
Mandan, ND 58554-7266  
Phone (701) 663-9818  
Fax (701) 663-9810  
1-888-663-9818  
E-Mail kelsch@corpcomm.net

\*Also Licensed in Minnesota

January 26, 2000

## HAND DELIVERED

ILLONA JEFFCOAT-SACCO  
DIRECTOR PUBLIC UTILITIES DIVISION  
PUBLIC SERVICE COMMISSION  
600 E BLVD AVE  
BISMARCK ND 58505-0480

RE: Western Wireless Corporation Response to Letter From Attorney Michael Maus dated  
December 21, 1999  
Our File No. 8451

Dear Ms. Jeffcoat-Sacco:

On behalf of Western Wireless Corporation, I wanted to reply to Attorney Maus's December 21, 1999, letter concerning the Wireless Residential Service Demo/Loan Equipment Agreement and CellularOne Wireless Residential Service Agreement.

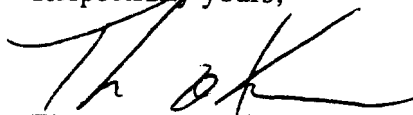
Mr. Maus argues that these agreements are in opposition to the position that Western Wireless took before the PSC that these units are mobile. Western Wireless disagrees with that argument.

In response to this I am enclosing a Declaration from John M. Tedeschi, Director of Product Development, for Western Wireless Corporation. The Declaration was filed with Federal District Court in response to a similar argument made by Consolidated.

Also enclosed is a statement filed in the state appellant court action along with an Addendum to CellularOne Wireless Residential Service Agreement which addresses the concerns of Western Wireless as stated in Tedeschi's Declaration.

I realize that this matter is not before the PSC at this time but Western Wireless felt that this information may be helpful to you and the PSC.

Respectfully yours,



Thomas D. Kelsch

TDK:ve  
Encs

c: Western Wireless Corporation

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

WESTERN WIRELESS CORPORATION and WWC  
HOLDING CO., INC., dba CELLULAR ONE,

*Plaintiffs,*

v.

CONSOLIDATED TELEPHONE  
COOPERATIVE,

*Defendant.*

CIVIL ACTION  
NO. A1-99-006

DECLARATION OF JOHN M. TEDESCHI

I, John M. Tedeschi, do hereby declare and affirm, under penalty of perjury:

1. I am employed by Western Wireless Corporation ("Western"), the Plaintiff in this matter. My title is Director of Product Development.
2. I have been employed by Western since November, 1995.
3. As part of my regular duties for Western, I head a development group which develops new telecommunications products, specifically those that operate off of a switch, and then introduce those products into the market. I also manage a competitive local exchange in Billings, Montana that provides landline business telecommunications to small businesses in that area. With respect to Western's new WRS offering, I headed the business development group that introduced the WRS service into Regent, North Dakota. My duties as part of this project generally included creating a project plan and supervising a project manager. One of

my specific duties included the review and approval of the Demo/Loaner Agreement and the Wireless Residential Service Agreement for Western's new WRS offering in Regent, North Dakota.

4. I am aware that Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, includes a passage in which the Defendant states that "paragraph 2 of the Terms & Conditions of the Wireless Residential Service Agreement signed by each of Western's WRS customers provides that the 'Unit' given to the customer for WRS 'is intended to remain stationary[,]'" as well as a passage which states, Western's "own internal documents which describe WRS as a 'fixed wireless product offering' and which, by written contract with WRS subscribers, prohibit the movement of the equipment provided to the customer for WRS."
5. I was not asked about either of these WRS customer contracts or any of these specific provisions in my deposition on August 12, 1999, or anytime thereafter. If, however, I had been asked why this sentence was included in Western's service agreements for its WRS service, I would have responded that this language was added primarily because of a concern over service quality. This concern was present because WRS was a new service offering and the equipment used to provide the service also was new. We knew that some trouble shooting would be necessary and, to make it easier to identify the source of any problems, we directed our customers to leave the equipment where it was first placed.
6. In addition, we knew that we could only ensure that calls made from and placed to the unit in the Regent exchange would be rated correctly only if the unit remained within the Regent area. If the customer used the unit outside of the Regent area, long distance charges might be incurred.

7. The fact that we required our customers to keep their equipment in its original location does not alter the fact that the WRS equipment is mobile cellular equipment that customers could use in mobile applications and, notwithstanding the customer service agreements, many do.

Dated: January 14, 2000



John M. Tedeschi

The Appellant recently supplemented the record in this proceeding by introducing two additional documents that they claim are "highly relevant and material." As explained in the attached Declaration of John Tedeschi, the language contained in the documents submitted by the Appellant that required the wireless access unit to remain stationary "was added primarily because of a concern over service quality." The Public Service Commission correctly concluded that, based upon all of the facts, the wireless access unit is mobile.

Recognizing, however, that the contract language limits the mobility of the wireless access unit and that mobility is an important attribute of the service, the attached Addendums to the CellularOne Wireless Residential Service Agreement and Wireless Residential Service Demo/Loaner Equipment Agreement have been prepared to remove this limitation and will be entered into with each of the Company's customers using the wireless access unit. Instead of addressing the quality of the service through contract language that limits the mobility of the wireless access unit, the Company will work with its customers to maintain its high-quality service.

**ADDENDUM TO  
CELLULARONE WIRELESS RESIDENTIAL SERVICE AGREEMENT**

This Addendum to the CellularOne Wireless Residential Service Agreement replaces Section 2 of the General Terms and Conditions with the following language:

2. Use of Service. You agree not to resell the Service (whether for profit or otherwise) or to use your Unit or the Service for any unlawful or abusive purpose or in such a way to create damage or risk to our business, reputation, employees, facilities, third parties or to the public generally. You have no proprietary or ownership rights to or interests in a specific telephone number ("Number") assigned to your Unit. We may change your Number assignment at any time. You may not use or assign the Number to any other Unit or electronic serial number ("ESN"). You shall not program any other Number into your Unit and any such act shall be deemed to be fraud and a breach of this Agreement.

\_\_\_\_\_  
Customer

\_\_\_\_\_  
CellularOne

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



**ADDENDUM TO  
WIRELESS RESIDENTIAL SERVICE DEMO/LOANER EQUIPMENT  
AGREEMENT**

This Addendum to the Wireless Residential Service Demo/Loaner Equipment Agreement replaces the introductory paragraph with the following paragraphs:

The Wireless Residential Service Demo/Loaner communication equipment described below, including any additional or replacement equipment (the "Unit"), is provided to you as a courtesy by Cellular One for Cellular One Wireless Residential Service ("Service") use only. You acknowledge that you are responsible for payment of all charges incurred by the Unit while it is in your possession and/or activated under your account. You agree to allow Cellular One access to the Unit installation location at a date and time set by Cellular One to remove the Unit (1) immediately upon Cellular One's request, (2) at the agreed upon date, or (3) within ten days of Service deactivation, whichever is first. If you have submitted equipment for repair, you acknowledge that Cellular One cannot guarantee estimated repair costs; you will be advised if actual repair costs exceed the estimate. For additional service terms and conditions, please see your Service Agreement.

\_\_\_\_\_  
Customer

\_\_\_\_\_  
CellularOne

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**HARDY, MAUS & NORDSVEN**

**ATTORNEYS AT LAW**

ALBERT J. HARDY  
MICHAEL J. MAUS \*  
MARY E. NORDSVEN \*\*

P.O. Box 570  
Dickinson, ND 58602-0570

TELEPHONE (701) 483-4500  
FAX (701) 483-4501  
e-mail  
hmn@mail.ctctel.com  
137 FIRST AVENUE WEST  
"BARRISTER BUILDING"

ALSO ADMITTED IN  
MONTANA \*  
COLORADO AND TEXAS \*\*

January 3, 2000

Mr. William W. Binek  
Public Service Commission  
600 E. Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

Fax: 1-701-328-2410

Re: **Consolidated Telephone Cooperative v. Western Wireless Corporation**  
**Case No. 08-99-C-02486-001**

Dear Mr. Binek:

Because the Public Service Commission did not take a position on the appeal which Consolidated Telephone Cooperative has before the State District Court in Burleigh County on the Western Wireless matter, I failed to provide you with a copy of a Motion which Consolidated filed. Enclosed with this letter is a copy of that Motion. It appears to me that based upon Western Wireless Corporation's failure to bring these documents to the attention of the PSC, the PSC may want to join with Consolidated in this pending motion.

Sincerely,

HARDY, MAUS & NORDSVEN



Michael J. Maus

MJM:lj

Enclosures

cc: Mr. Gene DeJordy  
Ms. Michele C. Farquhar  
Mr. Thomas D. Kelsch  
Consolidated Telephone Cooperative

**HARDY, MAUS & NORDSVEN****ATTORNEYS AT LAW**

ALBERT J. HARDY  
MICHAEL J. MAUS \*  
MARY E. NORDSVEN \*\*

P.O. Box 570  
Dickinson, ND 58602-0570

TELEPHONE (701) 483-4504  
FAX (701) 483-4501

e-mai

hmn@mail.ctctel.com

137 FIRST AVENUE WEST  
"BARRISTER BUILDING"

ALSO ADMITTED IN  
MONTANA \*  
COLORADO AND TEXAS \*\*

December 21, 1999

COPY

Ms. Illona Jeffcoat-Sacco  
Public Service Commission  
State Capitol Building  
600 East Boulevard  
Bismarck, ND 58505-0480

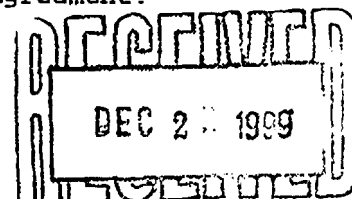
Re: **Western Wireless Corporation**

Dear Illona:

As you are probably aware, in addition to the dispute which was before the PSC between Consolidated Telephone and Western Wireless Corporation, there is also a lawsuit brought by Western Wireless against Consolidated in Federal Court alleging violations of anti-trust laws. As part of the discovery in that lawsuit, Western Wireless has produced two interesting (2) documents which would have been relevant to the PSC hearing if they had been produced at the time. I am enclosing copies of both of these documents with this letter.

The first document is entitled Wireless Residential Service Demo/Loaner Equipment Agreement. Beginning on line 2, the agreement states as follows: The Unit is intended to remain stationary; removing the Unit from its Cellular One installation location is a violation of this Agreement and your Cellular One Wireless Residential Service Agreement (your "Service Agreement") and may result in substantial additional fees to you, . . .

The second agreement is called Cellular One Wireless Residential Service Agreement. The backside of the agreement contains general terms and conditions. Under paragraph 2, the following language is set forth: The Unit is intended to remain stationary. Removing the Unit from the location where it was installed by us is a violation of this Agreement and may result in substantial additional fees to you, failure of the Unit, and/or termination of this Agreement.



Ms. Illona Jeffcoat-Sacco

December 21, 1999

Page Two

Both of these agreements between Western Wireless and their customers are in direct opposition to the position which Western Wireless took before the Public Service Commission. It should have been incumbent upon Western Wireless to inform the Commission that the devices are intended to remain stationary, not mobile. The fact that Western Wireless failed to bring this to the attention of the Commission appears to be a deliberate attempt to mislead the Commission. As a result, the appeal will be based upon an incomplete record.

Western Wireless should be fined or penalized for misleading the Commission by failing to bring these contracts to the Commission's attention when this matter was before the Commission.

Sincerely,

HARDY, MAUS & NORDSVEN

A handwritten signature in black ink, appearing to read "Michael J. Maus", with a long horizontal flourish extending to the right.

Michael J. Maus

MJM:lj

Enclosures

cc: Consolidated Telephone Cooperative  
Mr. Michael Bosh  
Mr. Thomas F. Kelsch

# WIRELESS RESIDENTIAL SERVICE DEMO/LOANER EQUIPMENT AGREEMENT

# CELLULARONE

The Wireless Residential Service Demo/Loaner communication equipment described below, including any additional or replacement equipment (the "Unit"), is provided to you as a courtesy by Cellular One for Cellular One Wireless Residential Service ("Service") use only. The Unit is intended to remain stationary; removing the Unit from its Cellular One installation location is a violation of this Agreement and your Cellular One Wireless Residential Service Agreement (your "Service Agreement") and may result in substantial additional fees to you, failure of the Unit, and/or termination of this Agreement. You acknowledge that you are responsible for payment of all charges incurred by the Unit while it is in your possession and/or activated under your account. You agree to allow Cellular One access to the Unit installation location at a date and time set by Cellular One to remove the Unit (1) immediately upon Cellular One's request, (2) at the agreed upon return date, or (3) within ten days of Service deactivation, whichever is first. If you have submitted equipment for repair, you acknowledge that Cellular One cannot guarantee estimated repair costs; you will be advised if actual repair costs exceed the estimate. For additional service terms and conditions, please see your Service Agreement.

- \_\_\_\_\_ You acknowledge that you have received a copy of the Cellular One Wireless Residential Service Agreement and agree to its terms and conditions.
- \_\_\_\_\_ You agree that you will be fully liable for any damage to or loss of the Unit, up to its \$400 replacement value. This charge may be billed to your Cellular One account pursuant to the terms of your Service Agreement.
- \_\_\_\_\_ You understand that your copy of this Agreement is your receipt, and must be presented when picking up your repaired equipment and/or returning the Unit.

CUSTOMER'S SIGNATURE	PRINT NAME	COMPANY NAME
HOME PHONE	WORK PHONE	ADDRESS
SOCIAL SECURITY NUMBER	DRIVER LICENSE NUMBER	
DATE OF DEMO/LOANER ISSUE	EXPECTED RETURN DATE	ACTUAL RETURN DATE

DESCRIPTION OF DEMO/LOANER EQUIPMENT		
WIRELESS RESIDENTIAL SERVICE PHONE NUMBER	ESN NUMBER	DATE/TIME
MANUFACTURER	MODEL	EQUIPMENT VALUE
COMMENTS:		

EQUIPMENT SENT TO MANUFACTURER FOR REPAIR			
MANUFACTURER NUMBER	ESN NUMBER	DATE OF PURCHASE	DATE SENT TO MANUFACTURER
MODEL NUMBER		MFG. RMA NUMBER	
WARRANTY		EST. REPAIR COST	
DESCRIPTION OF PROBLEM:			

RECEIVED	
CUSTOMER SIGNATURE	DATE
CELLULAR ONE SIGNATURE	DATE

RETURNED	
CELLULAR ONE SIGNATURE	DATE

W 0294

**CELLULARONE®**

SA # 0202

**Wireless Residential  
SERVICE AGREEMENT**

NEW \_\_\_\_\_ ADD ON TO MASTER \_\_\_\_\_

ACCOUNT NUMBER	CREDIT STATUS <input type="checkbox"/> PERSONAL <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> BUSINESS	CREDIT CLASS
CREDIT APPROVAL NUMBER / DUN'S NO.	DEALER	STORE LOCATION
TAX EXEMPT NO.	DEALER PHONE NO.	DEALER FAX NO.
		SALES REP. NO.

PERSONAL ACCOUNT		BUSINESS ACCOUNT		FOR CREDIT CHECK PURPOSES ONLY	
<input type="checkbox"/> BILL TO THIS ADDRESS		<input type="checkbox"/> BILL TO THIS ADDRESS		EMPLOYER NAME	HOW LONG
CUSTOMER NAME		COMPANY NAME		BIRTHDATE	SOCIAL SECURITY NO.
HOME STREET ADDRESS		WORK STREET ADDRESS		DRIVER'S LICENSE	
CITY/STATE/ZIP		CITY/STATE/ZIP		FORMER ADDRESS - IF LESS THAN 2 YEARS	
BUS. <input type="checkbox"/> SOLE PROP. ORG. <input type="checkbox"/> PARTNERSHIP		ATTENTION		BANK REFERENCE	TELEPHONE
HOME PHONE		BUS. PHONE		BRANCH	
BUS. PHONE		BUS. <input type="checkbox"/> CORPORATION		ACCOUNT NO.	

**ACTIVATION INFORMATION**

TOTAL NUMBER OF WIRELESS RESIDENTIAL UNITS REQUESTED AT THIS TIME \_\_\_\_\_

USER NAME \_\_\_\_\_

ACTIVATION DATE \_\_\_\_\_ PHONE NUMBER \_\_\_\_\_ ESN \_\_\_\_\_

RATE PLAN CODE \_\_\_\_\_ ACCESS CHARGE \_\_\_\_\_ PER MINUTE \_\_\_\_\_

LONG DISTANCE RATE \_\_\_\_\_ ACTIVATION CHARGE \_\_\_\_\_ DEPOSIT \_\_\_\_\_

INTERNATIONAL CALLING ☐ NO ☐ YES \$2.99 per month plus additional per minute rate

INTERNATIONAL CALLING MUST BE APPROVED BY CELLULAR ONE AND MAY REQUIRE AN ADDITIONAL DEPOSIT. RATES MAY VARY

ACTIVATION DATE \_\_\_\_\_ PHONE NUMBER \_\_\_\_\_ ESN \_\_\_\_\_

RATE PLAN CODE \_\_\_\_\_ ACCESS CHARGE \_\_\_\_\_ PER MINUTE \_\_\_\_\_

LONG DISTANCE RATE \_\_\_\_\_ ACTIVATION CHARGE \_\_\_\_\_

**FEES**

VOICE MAIL PHONE 1 \_\_\_\_\_ PHONE 2 \_\_\_\_\_ \$ \_\_\_\_\_ PER PHONE

CALL WAITING PHONE 1 \_\_\_\_\_ PHONE 2 \_\_\_\_\_ \$ \_\_\_\_\_ PER PHONE

3-WAY CALLING PHONE 1 \_\_\_\_\_ PHONE 2 \_\_\_\_\_ \$ \_\_\_\_\_ PER PHONE

CALL FORWARDING PHONE 1 \_\_\_\_\_ PHONE 2 \_\_\_\_\_ \$ \_\_\_\_\_ PER PHONE

DETAILED BILLING PHONE 1 \_\_\_\_\_ PHONE 2 \_\_\_\_\_ \$ \_\_\_\_\_ PER PHONE

OTHER PHONE 1 \_\_\_\_\_ PHONE 2 \_\_\_\_\_ \$ \_\_\_\_\_ PER PHONE

TOTAL PRICE \$ \_\_\_\_\_

HOW DID YOU HEAR ABOUT THE WIRELESS RESIDENTIAL SERVICES OFFERING? \_\_\_\_\_

There will be a \$ \_\_\_\_\_ one time activation charge or the first access bill.

We make no warranties, expressed or implied, regarding the Service or the Equipment, and our liability is limited pursuant to paragraphs 9 and 10 on the reverse side of this Agreement. By signature Customer confirms the truth and completeness of the information contained herein and confirms s/he has read all terms and conditions of this Agreement including the reverse side. Customer also authorizes us to obtain, from anyone, information about Customer's or its agent's credit history. In the event of unauthorized signature on behalf of a business, the undersigned agrees to be personally liable for amounts not paid when due.

X

PRINTED NAME \_\_\_\_\_

X

SIGNATURE \_\_\_\_\_

W 0292

W 0293

# MEMO

1. Availability. Service representations are offered only as estimations; actual service quality and availability may vary. You are responsible for ensuring that your Unit is operational and contains the pre-installed software necessary to utilize the Service. Service may only support data transfer at speeds up to 2,400 baud. Service is subject to transmission interruptions caused by atmospheric and physical conditions, and may be temporarily limited, interrupted or subject to any necessary or appropriate for the proper operation of the Service. We are not liable for any Service failures, including without limitation the failure of a 9-1-1 emergency call to be connected or completed (see Paragraph 10).

2. **Use of Service.** You agree not to ~~resell the Service~~ ~~use the Service for the profit or~~ ~~intend to use your Unit or the Service for any~~ ~~commercial or abusive purpose or in such a way as to cause damage or risk~~ ~~to our business, reputation, employees, facilities, third parties or to the public generally.~~ ~~We shall not~~ ~~transfer or~~ ~~own or~~ ~~control or~~ ~~have an interest in a specific telephone number ("Number") assigned to your Unit.~~ ~~may change your Number assignment at any time. You may not use or assign the Number to any other Unit or electronic serial number ("ESN"). You shall not program any other Number into your Unit and any~~ ~~ESN shall be deemed to be fraud and a breach of this Agreement. The Unit is intended to remain stationary. Removing the Unit from the location where it was installed by us is a violation of this Agreement and~~ ~~result in substantial additional fees to you, failure of the Unit, and/or termination of this Agreement.~~

3. **Term/Notice.** (a) This Agreement begins on the date Service is provided to your Unit and continues until terminated in the manner provided herein. You may terminate this Agreement by providing 30 days written notice to us at our address of record. Regardless of your plan, we may terminate this Agreement upon notice to you. We may terminate this Agreement upon notice to you. We may increase the charges for Service or modify these terms and conditions at any time, upon advance written notice to you. You may, upon receipt of notice of the modification, terminate this Agreement in the manner set forth in your use of the Service after we have given you notice and shall mean that you agree to such amendment. If we increase such charges and/or modify these terms and conditions and you do not terminate the Agreement within 14 days after notice is given, you must pay us any additional charges and if you fail for the Service to advance.

4. **Default/Termination.** We may discontinue Service and/or terminate this Agreement without prior notice to you if you do not pay any sum when due, breach any representations you made to us in this Agreement, fail to perform any of your obligations set forth in this Agreement or in any other agreement between you and us, use your Lull or Service in any abusive manner or in any way that damages or harms us, or, become the subject of any proceeding under the Bankruptcy Code or become insolvent. In any such case, you shall remain responsible for payment of all charges due to us under this Agreement, all charges (including, without limitation, all unbilled installment amounts) will be immediately due and payable. In the event of your default, you will reimburse us for our attorneys' and expert witnesses' fees, costs, investigation, collection and similar expenses incurred by us in the enforcement of any right or privilege hereunder. If this Agreement is terminated because of your default, we shall keep any charges or sums payable by you upon termination. If we agree to renew Service to you after discontinuing Service, you agree to pay any reactivation charges. Our remedies hereunder are not exclusive but are in addition to all other remedies provided by law.

5. **Modifying Your Account.** You may upon verbal or written notice to us add or delete Service features. Unless you have selected a special promotional rate plan or accepted promotional handset pricing you may, upon verbal or written notice to us and payment of transfer fee (if any) assessed by us, change to another rate plan beginning with the following billing cycle.

4. **Deposits.** We may require a deposit in which you grant us a security interest to secure your payment of all amounts when that is not prohibited by law. Deposits received by us may be commingled with other of our funds, and will not earn interest. The amount of your deposit may be increased by us at any time upon reevaluation of your usage and credit. You may either provide us such amount or terminate this Agreement, in which case any cancellation fee will be waived. You must promptly pay any bills you have given us a deposit. If this Agreement is terminated for any reason, any amount that you will be spotted to pay any of your charges then or thereafter due. Any remaining deposit or other credit balance on your account will be returned without interest (as allowed by law) to you at your last known address within ninety (90) days after termination. Unless otherwise prohibited by law, (a) any balance of five dollars (\$5.00) or less will not be returned but will automatically remain on deposit, and (b) the Service is not able to deliver the funds to you and returns them to us. In the such funds will be automatically deemed to remain ours, and you shall have no further claim thereon.

7. **Billing and Payment of Charges.** You will pay all charges for Service under this Agreement, including regular monthly Service and Usage charges. Usage charges include charges for all minutes and calls that are processed through your (A)ll or through any Number assigned to you, toll charges for calls you make from our local calling area to parties outside our local calling area, all domestic long distance charges assessed by another service provider for calls that are sent from or received by your Unit when you are outside our local calling area (premium charges), any applicable local access charges (e.g., assistance, etc.), and additional calling services offered by us which you use. You will be charged for Service features on a monthly basis, with any charges for a partial month of feature service being prorated back.

We bill in full minute increments and any fraction of a minute of usage is rounded up and charged as a whole minute at a full minute rate. You will be charged from the time you send or receive the call until the time you press the key to end the call. If we have agreed that you may pay for charges with a payment card account, we will charge amounts due to the next time the charges are billed, even if Service has been terminated. We will bill for the amount of any overcharges or undercharges that will be applied for such credit card account charges. To the extent allowed by law, amounts charged to you are irrevocable. If you have authorized us to charge amounts due to your credit card account, Paragraph 10 below that relates to your use and ownership of the credit card account and/or the Service account amounts charged thereto. You agree that you are still obligated to pay us and we will not accept any payment if you have not authorized charges to be made to your credit card account, or if the credit card issuer does not pay us. Payment must be received from you or your payment card issuer, or we may suspend or terminate your Service without notice without prejudice to our right to pursue collection of amounts due. Charges, including disputed amounts, must be paid by the date shown on the monthly invoice. You agree that you live in the territory, (a) it would be impractical to bill the exact amount of use promptly, and (b) in the event of such inexactness, you shall pay the liquidated damages of one and one-half percent (1.5%) per month on any balance thereof of any amount not paid when due. Damages shall be reduced or eliminated to the extent required by applicable law. If we accept full or partial payment or payment in kind, it shall not constitute an agreement that we will not pursue any other remedies. We may charge you a returned check fee of twenty dollars (\$20.00) or such lower amount as required by law for any check returned for any reason. Questions about or objections to any charges related to this Service shall be in writing and must be received by us prior to the date the payment due date of any objection shall be received.

8. **Taxes.** Any applicable sales, use, excise, public utility or other taxes, fees or charges imposed on us as a result of providing the Service or your Link to you will be added to your charges when imposed by law. If you are exempt from payment of any such taxes, you may provide us with an original Tax Exemption Certificate. The exemption will only apply from the date we receive the certificate. You cannot receive credit for any taxes already paid by you.

3. No Warranties. AS IS, WE ARE NOT THE MANUFACTURER OF YOUR UNIT AND WE MAKE NO WARRANTIES REGARDING THE SERVICE ON YOUR UNIT, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY TYPE OR CHARACTER. ALL SUCH WARRANTIES ARE EXPRESSLY EXCLUDED. STATEMENTS REGARDING OR DESCRIPTIONS OF THE SERVICE OR YOUR UNIT, IF ANY, BY US OR OUR AGENTS OR INSTALLERS ARE INFORMATIONAL ONLY AND ARE NOT MADE OR GIVEN AS WARRANTY OF ANY KIND. THE MANUFACTURER'S WARRANTY, IF ANY, IS BETWEEN YOU AND THE MANUFACTURER. IT DOES NOT APPLY TO US, AND IT WILL NOT BE ENFORCED BY US.

10. Limitation of Liability. OUR NONPERFORMANCE HEREUNDER SHALL BE EXCUSED AND WE SHALL NOT BE LIABLE IF CAUSED BY ACT OR OMISSION OF AN INDIVIDUAL, CARRIER, EQUIPMENT OR FACILITY FAILURE, EQUIPMENT OR FACILITY UPGRADE OR MODIFICATION, ACTS OF GOD, STRIKES, FIRE, WAR, RIOT, GOVERNMENT ACTIONS, EQUIPMENT OR FACILITY SHORTAGE, EQUIPMENT OR FACILITY RELOCATION OR CAUSES BEYOND OUR REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION THE FAILURE OF AN INDIVIDUAL, CARRIER OR FACILITY, INCLUDING A 9-1-1 EMERGENCY CALL, TO BE CONNECTED OR COMPLETED, OUR LIABILITY, IF ANY, FOR ANY SERVICE, OMISSION, INTERRUPTION, DELAY, ERROR, DEFECT OR OTHER FACTS WITH RESPECT TO THE SERVICE SHALL IN NO EVENT EXCEED THE AMOUNT OF THE PRORATED MONTHLY CHARGES TO YOU FOR SAID SERVICE DURING THE AFFECTED PERIOD, PROVIDED THAT NO LIABILITY SHALL RESULT FOR OUTAGES OF 24 HOURS OR LESS. IN NO EVENT SHALL WE BE LIABLE TO YOU, YOUR EMPLOYERS, AGENTS OR CUSTOMERS, OR ANY OTHER PARTY (COLLECTIVELY FOR PURPOSES OF THIS PARAGRAPH) FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY FAILURE OF SERVICE OR OUR FAILURE TO PERFORM HEREIN. THIS AGREEMENT SHALL NOT BE DEEMED TO SUBSCRIBE FOR DAMAGES TO PERSONS OR PROPERTY ARISING FROM SUBSCRIBER'S USE OF YOUR UNIT OR THE SERVICE OR THE INSTALLATION, REPAIR, OR MAINTENANCE OF YOUR LINE. YOU AGREE TO DEFEND, INDEMNIFY AND HOLD US HARMLESS, OUR CARRIER, AND ANY OF OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ALL OTHERS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES RELATING TO THIS AGREEMENT AND SUBSCRIBER'S USE OF THE SERVICE. YOU FURTHER AGREE TO PAY FOR REASONABLE ATTORNEYS' AND EXPERT WITNESSES' FEES AND COSTS ARISING FROM ANY ACTIONS OR CLAIMS HEREUNDER AND TO BEYOND REASONABLE DUBIT INTO THE APPLICABLE ACTION PROGRAM.

11. Privacy. Privacy cannot be guaranteed, and we shall not be liable to you for any loss of privacy you experience while using your Link or the Service.

<sup>12</sup> A. Assignment. We may assign in whole or in part our rights or duties under this Agreement without prior notice to you and upon such assignment we shall be deemed to have assigned all our obligations hereunder. You may assign this Agreement only with our prior written consent. Subject to this restriction, this Agreement shall inure to the benefit of and be binding upon the heirs, successors, administrators, and assigns of both parties.

13. **Notices.** Written notices to you shall be considered given only if they are deposited in the U.S. Mail addressed to you at your last known address as shown on the service file. Written notice is considered given when received at our address of record. Verbal notices shall be considered given on the date reflected in our office memo.

14. Return Policy: To be eligible for a return, your Unit must have been purchased from us and include its receipt and original packaging and contents, undamaged and in good working condition. If your Unit does not meet these requirements, you may return your Unit within 30 days of the purchase date for a full refund. For more information, please visit [www.rockwell.com](http://www.rockwell.com).

16. **Severability.** Should any part or portion of this Agreement be found invalid, the balance of the provisions shall remain unaffected and in full force and effect, unless our obligations hereunder are rendered impossible.

19. Mandatory Arbitration. Any controversy, claim or dispute between you and us, including actions by us to collect unpaid charges, should be submitted to final, binding arbitration under the auspices of the American Arbitration Association pursuant to its published Wireless Industry Arbitration Rules, incorporated herein by this reference and available by calling the AAA at 800) 776-7878. Notice of arbitration shall be served on our registered agent. All claims shall be arbitrated individually, and there shall be no consolidation or class treatment of any claim. YOU AGREE TO WAIVE THAT THIS ARBITRATION PROCEEDS ON A WAIVER OF ANY RIGHT TO A JURY TRIAL.

12. Government Law. This Agreement is subject to the laws of the State of New York.

# Kelsch Kelsch Ruff & Kranda

C.F. Kelsch  
1890-1987

Attorneys at Law  
Mandan, North Dakota

\*CLA Member

WILLIAM C. KELSCH  
THOMAS F. KELSCH, P.C.  
ARLEN M. RUFF, P.C.  
THOMAS D. KELSCH, P.C.  
TODD D. KRANDA, P.C.\*  
TIMOTHY J. WAHLIN, P.C.  
ROB FORWARD, P.C.  
WILLIAM J. DELMORE

103 Collins Avenue  
P.O. Box 1266  
Mandan, ND 58554-7266  
Phone (701) 663-9818  
Fax (701) 663-9810  
1-888-663-9818  
E-Mail kelsch@corpcomm.net

\*Also Licensed in Minnesota

September 24, 1999

JON MIELKE, EXECUTIVE SECRETARY  
NORTH DAKOTA PUBLIC SERVICE COMMISSION  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0480

Re: **Western Wireless Corp. v. Consolidated Tel. Coop., Inc.**  
**Case No. PU-1564-99-17**  
**Western Wireless' Response to Consolidated's Petition for**  
**Reconsideration**

Dear Mr. Mielke:

This letter responds briefly on behalf of Western Wireless Corporation to Consolidated Telephone Cooperative's September 14, 1999, Petition for Reconsideration in Case No. PU-1564-99-17. Consolidated's Petition basically makes the same argument that the company originally raised as a counterclaim to our now-resolved complaint regarding Consolidated's termination of service to Western Wireless, that the Commission possesses rate and entry jurisdiction over Wireless Residential Service ("WRS") offered by Western Wireless in Regent, North Dakota. As explained below, there is no basis for the Commission to reverse course in this matter, and the Commission therefore should not grant Consolidated's Petition.

**Background.** On January 7, 1999, Western Wireless began offering WRS in Regent. Four days later, Consolidated disconnected without notice certain services that Western Wireless purchases in order to provide WRS. Western Wireless immediately filed a Complaint and Expedited Motion for Preliminary Injunction seeking restoration of service and the assessment of penalties against Consolidated. Consolidated restored service on February 1, 1999, and later filed a counterclaim requesting that the Commission order Western Wireless to cease and desist providing WRS until we obtain a Certificate of Public Convenience and Necessity. On August 31, 1999, the Commission issued its *Order* imposing penalties on Consolidated. The *Order* also rejected the counterclaim, holding that the Commission lacks rate and entry jurisdiction over Western Wireless' Commercial Mobile Radio Service ("CMRS") offering of WRS under 47 U.S.C. § 332(c)(3)(A).

**Discussion.** Consolidated seeks to have the Commission assert jurisdiction over WRS by reiterating incorrect legal arguments and by quibbling about the degree of mobility of the wireless local loop ("WLL")



September 24, 1999

Page 2

customer premises equipment ("CPE") used by Western Wireless' WRS subscribers. However, the analysis in the *Order* supporting the Commission's decision not to assert jurisdiction over WRS was well-reasoned, legally-correct and should be sustained.

First, the Commission properly rejected Consolidated's contention that the WRS offering is entirely fixed, rather than a hybrid fixed/mobile or mobile service offering, and the "ordinarily does not move" language from 47 U.S.C. § 153(28) cited by Consolidated does not change this correct result. The WLL CPE used by WRS subscribers can be moved to any room in the customer's home, can be used outside the home anywhere on the customer's property, and can easily be moved and used anywhere in the service area. And, as noted by both the Commission and Consolidated, the WLL CPE can be battery-operated for "on-the-go" applications such as out-of-doors (without needing to be plugged into an electric socket), or during travel. The Commission should pay no heed to Consolidated's attempt to confuse small differences in the ease of mobile applications between WLL CPE and traditional cellular phones. WLL CPE is certainly "capable of being moved" and may "ordinarily" be moved wherever and whenever WRS customers so desire. In fact, there are various types of CPE used by cellular subscribers, some of which are more mobile than others.

Second, Consolidated's citation of *Louisiana PSC v. FCC*, 476 U.S. 355 (1986), and its analysis thereunder are misguided. *Louisiana PSC* addresses the FCC's power, as a federal agency charged with implementing a federal statute, to preempt state law using general preemption powers implicit in the Communications Act. However, where the Act itself explicitly preempts state law - as in the case of 47 U.S.C. § 332(c)(3)(A), as recognized by the Commission - the analysis in *Louisiana PSC* has no bearing on the matter. Indeed, the issue in *Louisiana PSC* was the limits on FCC power contained in Section 152(b) of the Act, 47 U.S.C. § 152(b), which (as amended) specifically states that "*Except as provided in . . . section 332 . . . nothing in this Act shall be construed to apply or to give the [FCC] jurisdiction with respect to . . .*" See *Louisiana PSC*, 476 U.S. at 360 (citing 47 U.S.C. §§ 151, 152(b)). Hence, given that the Commission is precluded from exercising rate and entry jurisdiction over CMRS offerings by Section 332(c)(3)(A) of the Act, and not by any action by the FCC, *Louisiana PSC* is simply inapplicable to the instant case.

Finally, WRS is indeed a CMRS offering, and Consolidated's analysis of the FCC precedent on this issue is misguided. The discussion in paragraphs 35-36 of the *Order* cogently steps through the statutory and regulatory bases underlying the Commission's lack of jurisdiction over WRS as a CMRS offering. And it is clear that, although the regulatory status of completely fixed wireless offerings by CMRS providers remains an open question (which the FCC has indicated it will likely answer by sweeping such services within its CMRS rubric), "the FCC determined that services having both fixed and mobile capabilities fall within the statutory definition of mobile services," as this Commission has properly recognized. See *Order* at ¶ 35; see also *id.* at ¶ 36 (quoting *Amendment of the Commission's Rules To Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, First Report and Order and Further Notice of Proposed Rule Making, 11 FCC Rcd 8965, ¶ 7 (1996) ("under the Communications Act, we have concluded that services having both fixed and mobile capabilities, e.g., services provided through dual-use equipment, fall within the statutory definition") (citations and internal quotation omitted)).